IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rashid. Versus Bismilla.

S.B. Criminal Misc. Petition No.854/2003
against the order dated 31-7-2003 passed
by the Addl. Sessions Judge, Nathdwara,
in Criminal Revision No. 5/2002.

...

Date of Order: November 07, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

None present for the petitioner.
Mr. Dilip Kawadia, for the non-petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 31-7-2006 passed by the Additional Sessions Judge, Nathdwara (for short, "the Revisional Court" hereinafter) in Criminal Revision No.5/2002, whereby the revision petition filed by the petitioner against the order dated 15-5-2002 passed by the Additional Chief Judicial Magistrate, Nathdwara (for short, "the trial Court" hereinafter) was dismissed.

No one appears for the petitioner despite repeated calls. I have heard learned counsel for the non-petitioner.

Carefully perused the orders passed by the trial Court as well as the Revisional Court.

On an application filed by the non-petitioner under Section 125 of the Code against the petitioner seeking monthly allowance of maintenance for herself and her minor son Bilal, the trial Court, vide order dated 15-5-2002, granted monthly allowance of maintenance @ Rs.500/- per month in favour of the non-petitioner and @ Rs.300/- per month in favour of her minor son Bilal, totalling Rs.800/- per month. The order of the trial Court came to be challenged by the petitioner as well as by the non-petitioner before the Revisional Court. The Revisional Court, vide impugned order dated 31-7-2003, dismissed the revision petition filed by the petitioner; however, the revision petition filed by the non-petitioner was allowed and the monthly allowance of maintenance granted by the trial Court in favour of the non-petitioner @ Rs.500/- per month and @ Rs.300/- per month in favour of minor son Bilal, were enhanced to Rs.900/- per month each, from the date of the application i.e. 13-4-2000. Aggrieved by the order impugned dated 31-7-2003 dismissing the revision petition filed by the petitioner, the petitioner has filed the instant criminal miscellaneous petition.

It has not been disputed before the trial Court by the petitioner that the non-petitioner is his legally wedded wife and from this wed-lock, Bilal was born from the loin of the petitioner.

Though before the Revisional Court, the petitioner came with a plea that he had divorced the non-petitioner, however, before the trial Court, no such plea was taken. Even the plea of divorce to the non-petitioner taken by the petitioner before the Revisional Court for the first time is not sustainable in view of the application filed by the petitioner himself before the Family Court, Udaipur for restitution of conjugal rights on 11-8-2003 supported by an affidavit of the petitioner himself. This shows that the plea of divorcing the non-petitioner, though not taken before the trial Court and for the first time taken before the Revisional Court, is unfounded and appears to be contrary to the stand taken by the petitioner himself.

Before the trial Court, the non-petitioner herself appeared as AW 1 and produced AW 2 Halima and AW 3 Mustaq Ahmed. The petitioner did not appear before the trial Court, however, produced two witnesses, viz. NAW 1 Rashida and NAW 2 Mohammed Ashraf. The trial Court did not rely on the statements of these two witnesses produced by the petitioner and in my view, rightly so. At any rate, their evidence is not of any help to the petitioner. It would have been better for the petitioner to appear himself and make his statement before the trial Court.

It has been established by a reliable evidence produced by the non-petitioner that the petitioner is having his

own truck, tempo and he himself is driving the truck as also he is vendor in fruits and vegetables and from all these sources, his monthly income, as stated by the non-petitioner and her witnesses, is Rs.15,000/- per month. The Revisional Court, considering the income of the petitioner and the fact that for maintaining two persons, a sum of Rs.900/- per month each, is reasonable monthly allowance of maintenance, allowed the revision petition filed by the non-petitioner and enhanced the maintenance from Rs.500/- and Rs.300/- per month in favour of the non-petitioner and her minor son Bilal, to Rs.900/- per month each. In my view, the order impugned, enhancing the maintenance in favour of the non-petitioner and her son Bilal, cannot be said to be erroneous. On the contrary, it has been passed on sound and proper appreciation of th evidence produced by the parties before the trial Court. In this view of the matter, no case for interference in the inherent jurisdiction is made out. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of the Court.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

mcs